

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-1080

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee

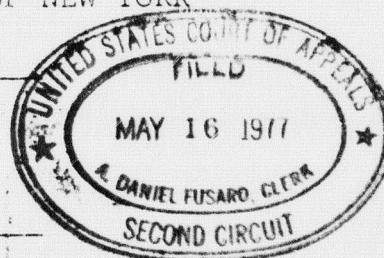
v.

SAMUEL MOSCHIANO,
Appellant

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FROM THE WESTERN DISTRICT OF NEW YORK

APPENDIX



RICHARD J. ARCARA,
United States Attorney,
Western District of New York.

LLOYD G. PARRY,
Special Attorney,
Buffalo Strike Force.

SIDNEY M. GLAZER,
MARYE WRIGHT,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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VOLUNTARY STATEMENT

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CITY or TOWN Rochester, STATE of NEW YORK, COUNTY of MONROE
 DATE June 19th, 1975 TIME 3:00pm PLACE Monroe County Sheriff's Dept.
 I, Samuel Moschiano being duly sworn, am 60 years of age
 and my address is 196 North Goodman Street, Rochester, New York
 I have been duly warned by Inv. Jann Kovack who has identified
 himself as Investigator with the Monroe County Sheriff's Dept.

that I have the right to remain silent and don't have to say anything if I don't want to; that anything I say can be used against me in a court of law; that I have the right to talk to a lawyer before making any statement and to have him here with me; that if I can't pay for a lawyer, one will be given to me before I make any statement, if I wish.

I understand what my rights are and am willing to make a statement. I do not want a lawyer at this time. No promises or threats have been made to me to induce me to make this statement.

I, Samuel Maschiano, residing at 196 North Goodman Street, Rochester, New York, and being 60 years of age make the following statements relative to my involvement with Patrick Marrocco and others in the property located at 884 Emerson Street, Rochester, New York.

Around July 1969 I purchased the building and property located at 884 Emerson Street in the City of Rochester, known as the El Marracco Club, for \$22,000 from Patrick Marrocco. The agreement made me the owner of the property, the business stayed in the name of Marrocco. At the time of the purchase I insured the property with Vincent Rallo for \$135,000.

A while later Pat Marracco changed the name of the business to THE NICHELOLDIAN, but it was kept in his name.

I purchased the property which included the building housing the the night club and the surrounding lot. It had been assessed for \$135,000 and to get into the property for \$22,000 seemed at the time a good investment at the time.

About two weeks prior to the fire of January 26th, 1970 which destroyed the building at 884 Emerson Street, Rochester, Patrick Marrocco came to me in the club. Marrocco was in ~~financial~~ trouble, I knew it and so did just about everyone. He told me that the place was going to be burned down for the insurance money. He was in debt and this was the only way out. He went on to say that he had the people lined up to do the job and that it would cost us about 25% of the insurance money for the job. I asked for a while with him, explaining that I had been collecting the rent on the place and that things were going ok, he cut me short and said that the way it is going to be. I had no more conversation with Marrocco about the place burning down until it happened on January 26th, 1970.

I have read this statement consisting of _____ page(s) and the facts contained therein are true and correct. I have also been told that swearing to a false statement can make me guilty of an additional crime.

Witness: Patrick Marrocco

Witness: John F. French

Samuel Moschiano
(Signed by person making statement)

Subscribed and sworn before me

this 19th day of June, 1975

George P. Chase
Notary Public

GEORGE P. CHASE

NOTARY PUBLIC State of N.Y., Monroe County

My Commission Expires March 30, 1977



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BEST COPY AVAILABLE

VOLUNTARY STATEMENT

PAGE 2 OF 2 PAGESCITY or TOWN _____, STATE of NEW YORK, COUNTY of MONROE
DATE _____ TIME _____ PLACE _____I, _____, being duly sworn, am _____ years of age
and my address is _____
I have been duly warned by _____, who has identified
himself as _____that I have the right to remain silent and don't have to say anything if I don't want to; that anything I say can be used
against me in a court of law; that I have the right to talk to a lawyer before making any statement and to have him here
with me; that if I can't pay for a lawyer, one will be given to me before I make any statement, if I wish.I understand what my rights are and am willing to make a statement. I do not want a lawyer at this time. No promises
or threats have been made to me to induce me to make a statement.

he was sitting with us.

~~John~~ About five months later, or about fifteen months after the fire
 we finally got paid the insurance money. Vincent Rallo, Patrick Maracco,
 and myself met at my lawyer's office, Mr. Vincent Trinker. It was at this
 meeting that I got \$87,760. From this money I gave Rallo \$12,000 and Maracco
 gave him \$27,000. Rallo told us that this money was to go to ~~John~~ ^{him}
~~John's farm~~, the farm.

I have read this statement consisting of _____ page(s) and the facts contained therein are true and correct. I have also been
 told that swearing to a false statement can make me guilty of an additional crime.

Witness:

Stella J. Marks

Witness:

John F. Rinaldi

(Signed by person making statement)

Subscribed and sworn before me

this 19 day of June, 1975George P. Chase

Notary Public

GEORGE P. CHASE

NOTARY PUBLIC State of N.Y. Monroe County

My Commission Expires March 30, 1977



IN THE MATTER OF SAMUEL L. MOSCHIANO
A GRAND JURY WITNESS

O R D E R

THE UNITED STATES OF AMERICA by and through Richard J. Arcara, United States Attorney for the Western District of New York, and Lloyd George Parry, Department of Justice Attorney, having made application to this Court for an Order requiring the hereinabove-named Witness to give testimony and provide other information before the United States District Court and Grand Jury for the Western District of New York and proceedings ancillary thereto about alleged violations of the United States of America, including particularly violations of 18 U.S.C. §§1341 and 1962.

AND IT APPEARING to this Court, after careful consideration of the facts and circumstances alleged in that Application and in the letter of approval of Richard L. Thornburgh, Assistant Attorney General in Charge of the Criminal Division, copies of each of which are attached hereto and the contents of which are incorporated herein by reference, as well as the additional matters presented in open Court on this date, that the testimony and other information sought by the Government may be necessary to the public interest and that the said Witness is likely to refuse to testify and provide other information on the basis of his privilege against self-incrimination.

NOW, THEREFORE, IT IS ORDERED that the said Witness, SAMUEL L. MOSCHIANO be and is hereby directed and required, pursuant to Sections 6002 and 6003 of Title 18 of the United States Code, to appear forthwith before the United States Grand Jury for the Western District of New York, sitting on the second floor of the United States Courthouse located at 100 State Street in the City of Rochester, New York,

there to give testimony and provide other information fully and completely in connection with matters under inquiry.

PROVIDED, HOWEVER, that no testimony or other information so compelled under this Order, whether before the District Court, Grand Jury, or any proceeding ancillary thereto, or any information directly or indirectly derived therefrom may thereafter be used against the said Witness except in a prosecution for perjury, making a false declaration, or otherwise failing to comply with the terms of this Order.


UNITED STATES DISTRICT JUDGE

DATED: September 25, 1975

AT: Rochester, New York

1 W I L L I A M M A H O N E Y , 93 Newport Road,
2 Rochester, New York, called as a witness on behalf of the
3 Government, and being first duly sworn, testified as follows:
4 DIRECT EXAMINATION BY MR. PARRY:

5 Q Mr. Mahoney, what is your occupation?

6 A Chief of Detectives, Monroe County Sheriff's Department.

7 Q How long have you been with the Monroe County Sheriff's
8 Department?

9 A Three years.

10 Q Prior to that time, how were you employed?

11 A Before that?

12 Q Yes.

13 A Twenty-two years with the Rochester Police Department.

14 Q Now, directing your attention to June 19, 1975, did you
15 have occasion on that date to meet with one Samuel
16 Moschiano?

17 A Yes, sir, I did.

18 Q Now, the individual that you refer to as Samuel Moschiano,
19 do you see him in the courtroom today?

20 A Yes, sir, seated next to Mr. Hirsch, in the white turtle
21 neck and the checked jacket.

22 MR. PARRY: For the record, the witness has identified the
23 defendant, Samuel Moschiano.

24 BY MR. PARRY:

25 Q At that point how long had you known Mr. Moschiano?

A-5

A I first met him about twenty-two years ago while walking a beat.

Q When you met him while walking a beat --

A He had a place of business.

Q That was on your beat?

A Yes.

Q And you have maintained your contact with Mr. Moschiano since that time, is that correct?

A I have seen him off and on, yes, sir.

Q Now, on this occasion, on June 19, 1975, approximately what time of the day did you first see Mr. Moschiano?

A A little after 11:00 A.M.

Q Where did you see him?

A In my office in the Sheriff's Detective Bureau.

Q Can you tell us, please, who else was present at the time you saw Mr Moschiano at 11:00 A.M.?

A Investigator Kovack from the Arson Squad.

Q At that time that you met with Mr. Moschiano and Investigator Kovack, can you tell us, please, what transpired?

A Yes, I spoke to Mr. Moschiano and informed him that I was investigating an arson of the building that he was an owner of.

Q What building was that?

A This was the El Marrocco Club at 384 Emerson Street.

Q Thank you. Please continue.

A At this point I asked Mr. Moschiano -- told Mr. Moschiano before I asked him any questions that I would like to advise him of his rights. I then advised Mr. Moschiano that he had the right to remain silent, that anything he said could be used against him in a court of law. I asked Mr. Moschiano if he understood what I was saying, he said he did. I further advised Mr. Moschiano that he had the right to the services of a lawyer and to have a lawyer present before any questioning by me began, that if he could not afford a lawyer, one would be appointed at no expense to him by the court. I asked Mr. Moschiano if he understood this, and he said he did. I asked him if he wanted a lawyer, and he said no. I further advised Mr. Moschiano that should he desire to talk with me about the matter that he could stop at any time if he desired. I asked him if he understood that, and he said he did. I then asked Mr. Moschiano if he would discuss the matter with me without a lawyer present, and he said he would.

Q Now, can you tell us, please, what it was that you said to him and what he said to you relative to this fire at 884 Emerson Street?

A Yes, sir. I asked Mr. Moschiano if he owned the building there. He told me he bought it in 1969 for about \$22,000. He said it was assessed at \$135,000., he thought it was

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1 a good investment. Mr. Moschiano told me that after he
2 bought it, the agreement with Pat Marrocco, the person
3 he bought it from, was that he would own the building
4 and the surrounding lot, and that Marrocco would continue
5 to own the business. He said after he bought it that
6 he insured it with an insurance agent, Mr. Vincent Rallo,
7 for \$135,000. He said about two weeks before the actual
8 fire, January of 1970, that Mr. Marrocco came to him and
9 told him that he was heavily in debt and that he was
10 going to burn the place down for the insurance money.
11 He said that he had the persons lined up to do the job,
12 and that it would cost twenty-five per cent of the in-
13 surance proceeds. Mr. Moschiano told me that he said to
14 Mr. Marrocco that everything was going along all right,
15 he was collecting the rent okay, things were working out
16 all right, he didn't see any reason to do this. Marrocco
17 said he was heavily in debt and that was the way it was
18 going to be. He cut him short he said, and that was the
19 end of that conversation. He said he did not talk to
20 Mr. Marrocco until about the day of the fire. At that
21 time there was a fire, and he said about two months after
22 the fire Mr. Marrocco came to him, and told him that they
23 had to go to Frank Valenti's farm in Henrietta regarding
24 the insurance money. He said they went up there, met with
25 Vincent Rallo, the insurance man --

A-8

MR. HIRSCH: Excuse me. Your Honor, based upon your prior ruling --

THE COURT: Yes, I think we probably ought to have some closely controlled interrogation of Mr. Mahoney.

BY MR. PARRY:

Q Mr. Mahoney, at some point in this conversation that you had with Mr. Moschiano did he discuss with you a settlement which took place in the office of one Vincent Trinker?

A Yes, sir, he did.

Q Would you tell us what Mr. Moschiano had to say about the settlement and what transpired at that settlement?

A He said about fifteen months after the fire he went to the office of Vincent Trinker, an attorney, and Vincent Rallo was present, and he received a check for \$87,000., \$87,760., and he said Mr. Marrocco was present, and Mr. Marrocco gave Rallo \$27,000. and he gave him \$12,000., Mr. Moschiano.

Q Now, at the time that Mr. Moschiano made this statement to you about Mr. Marrocco paying the \$27,000. to Mr. Rallo, did that come out in the course of the narrative or were these words that you placed in Mr. Moschiano's mouth?

MR. HIRSCH: Your Honor, I object to the form of the question.

THE COURT: No, he has put it in the disjunctive, overruled.

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1 THE WITNESS: No, sir, Mr. Moschiano told me that.

2 BY MR. PARRY:

3 Q Now, approximately how long did this conversation last
4 in your office that morning?

5 A I would judge about forty-five minutes.

6 Q Who else was -- was Detective Kovack present during the
7 entire conversation?

8 A No, sir.

9 Q Can you recall approximately how long he was there before
10 he left?

11 A Well, he was there for the beginning portion of it, the
12 rights, and I would say part of the initial conversation
13 possibly, to the best of my recollection.

14 Q Now, did anyone else come in and out of your office while
15 you were talking to Mr. Moschiano?

16 A No, sir.

17 Q After this initial forty-five minute session can you tell
18 us, please, what occurred?

19 A I asked Mr. Moschiano if he would submit to a polygraph
20 test, he said he would. I asked him if he would give
21 me a statement following that if everything was satis-
22 factory, he said he would.

23 Q Thereafter what happened?

24 A Mr. Moschiano was with Investigator Marinich for about
25 an hour, I would say from noon to one, and he returned

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H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 to my office with Marinich. Then I decided I would con-
2 tact Special Agent Olson of the FBI, who was involved
3 in a joint investigation with us. Investigator Kovack
4 and Special Agent Olson talked to him for a while, and
5 then a statement was taken.

6 Q Were you present while Kovack and Special Agent talked
7 to Mr. Moschiano?

8 A I might have been in and out once or twice, I didn't take
9 part in the conversation.

10 Q Where did the conversation take place?

11 A In my office.

12 Q Do you know whether or not anyone else was present with
13 Investigator Marinich and Mr. Moschiano at the polygraph
14 examination?

15 A Not to my knowledge, nobody else was present.

16 Q Do you know approximately what time on June 19, 1975 that
17 Mr. Moschiano left the Sheriff's Office?

18 A Late afternoon, probably in the area of four, 4:30 P.M.,
19 to the best of my recollection.

20 Q Now, directing your attention to September 25, 1975, did
21 you have occasion to come in contact again with Mr.
22 Moschiano?

23 A Yes, sir, I learned he was in the Monroe County Jail.

24 Q Can you tell us, please --

25 THE COURT: Excuse me. When was this?

A-11

1 MR. PARRY: September 25, 1975.

2 BY MR. PARRY:

3 Q Can you tell us, please, what transpired once you learned
4 that Mr. Moschiano was in the Monroe County Jail?

5 MR. HIRSCH: Objection, unless this is within the contents
6 of the indictment.

7 THE COURT: I assume it bears upon the indictment?

8 MR. PARRY: It does bear upon the indictment, it goes to
9 the motive.

10 THE COURT: What it goes to, the jury will have to decide.
11 I am only asking you whether or not it does
12 bear upon it, and if you say it does, I will
13 proceed with you in good faith until I see
14 the contrary.

15 MR. PARRY: Thank you, Judge.

16 BY MR. PARRY:

17 Q Would you tell us, please, what transpired when you learned
18 that Mr. Moschiano was in the Monroe County Jail?

19 A I sent word to one of the guards to ask him if he wanted
20 to see me, and the guard replied to me that he did. I
21 asked the guard to bring him up to my office. Mr.
22 Moschiano came up, and I said to him, "What are you doing
23 in jail?" He said he hadn't gone through with his testi-
24 mony before the grand jury regarding the statement he
25 gave me. I asked him why, and he said that he was scared,

A-12

1 I asked if he had been threatened, and he said, "It is
2 not me that I worry about, it is my son, no way I can
3 protect him." I said, "Who is 'they'?" He said, "I got
4 a telephone call telling me something would happen to my
5 son." I then explained to Mr. Moschiano that there were
6 protection programs available from the Government for the
7 entire family, if necessary, and that in the meantime I
8 would be willing to place his family under special
9 protection of the Sheriff's Office, if that would be of
10 any help to him. He thought it over for a couple of min-
11 utes and said, "No, I would like to tell the truth, but
12 I am going to take my chances."

13 Q Let me ask you this, when you told Mr. Moschiano about
14 the Federal Witness Protection Program, did you explain
15 to him what that meant, what was involved in that?

16 A Yes, sir, I explained --

17 MR. HIRSCH: I object, if the Court please, irrelevant.

18 THE COURT: Just answer yes or no without --

19 THE WITNESS: Yes, I did.

20 BY MR. PARRY:

21 Q What did you tell him about the Federal Witness Protection
22 Program?

23 MR. HIRSCH: I object to that.

24 THE COURT: I don't see the pertinency of this.

25 MR. PARRY: Your Honor --

A-13

1 MR. HIRSCH: If we are going to argue this, I request we
2 do it outside of the presence of the jury.
3 MR. PARRY: That might be a good idea, if it could be out-
4 side the presence of the jury.
5 THE COURT: I will ask you, ladies and gentlemen, to step
6 out briefly, please.

7
8 (Thereupon, the jury exited the courtroom
9 at 11:43 A.M.)
10

11 THE COURT: Inasmuch as Mr. Moschiano has said to decline
12 such protection, what is its pertinency?

13 MR. PARRY: The pertinence is this, your Honor, the motive
14 that we are establishing through Mr. Mahoney's
15 testimony, the motive to lie here was one of
16 fear. However, while it provided a motive,
17 we want to avoid establishing a duress defense,
18 and this bears on whether or not Mr. Moschiano
19 would have available to him a duress defense.
20 If, in fact, he was made aware of the avail-
21 ability of the Federal Witness Protection
22 Program and what that entailed, then he was
23 aware he had an alternative.

24 THE COURT: "Duress defense," you are talking about duress
25 from lay persons?

A-14

1 MR. PARRY: Duress from these people who allegedly threatened
2 his son.

3 MR. HIRSCH: I can say we are not claiming that, your
4 Honor. That is not a defense here, that as-
5 pect.

6 THE COURT: I wonder how much of a defense it is. I know,
7 of course, that it gets mileage with a jury
8 sometimes, they will say, 'The poor soul, why
9 shouldn't he have lied rather than end up in
10 the river.' Legally it gets him nowhere. But
11 you say you are not going to assert that defense?

12 MR. HIRSCH: We are not going to assert that defense that
13 he allegedly lied as a result of fear of out-
14 side harm to his family or to himself.

15 THE COURT: The other defense is that he did not lie?

16 MR. HIRSCH: Our defense is that he did not lie, and that
17 will be our defense. As far as the aspect
18 that they are -- the Government is trying to
19 establish now, that Mr. Moschiano allegedly
20 refused to testify before the grand jury the
21 way he testified on the 19th of June was be-
22 cause he was afraid, physically afraid of any-
23 one or physically afraid of harm being caused
24 to his family, is not a defense, and it will
25 not be raised.

A-15

1 MR. PARRY: Nevertheless, for purposes of presenting a
2 coherent case, your Honor, which would re-
3 present the reality of the situation as it
4 occurred, I think we are entitled to get into
5 this. Our evidence --

6 THE COURT: No, I think the label we have on the Federal
7 Protection Program, and so forth, for the
8 safety of himself and family, which I think
9 Chief Mahoney made mention of, is sufficient.

10 MR. PARRY: Very well, your Honor.

11 THE COURT: All right, bring the jury back.

12

13 (Thereupon, the jury entered the courtroom
14 at 11:45 A.M.)

15

16 BY MR. PARRY:

17 Q Mr. Mahoney, after September 25, 1975, did you have
18 any further contact with Mr. Moschiano concerning these
19 matters?

20 A No, sir.

21 MR. PARRY: You may inquire.

22

23 CROSS-EXAMINATION BY MR. HIRSCH:

24 Q Good morning, Mr. Mahoney.

25 A Mr. Hirsch.

1 Q And did he also discuss with you the insurance situation
2 involving Vincent Rallo and Pat Marrocco, as it involved
3 the El Marrocco Club?

4 A I believe he suspected a connection there.

5 Q Yes. This was all part of the debriefing that took some-
6 where around five days, and in which Special Agent Olson
7 was involved?

8 A That is correct.

9 Q All right. This is all prior to the 19th?

10 A Yes, sir.

11 Q At that time were you interchanging information with the
12 FBI?

13 A Yes, sir.

14 Q And when a special agent had information or an individual
15 pertaining to let's say the El Marrocco, they would dis-
16 cuss it with you?

17 A Well, there was a once a week meeting set up supposedly
18 to take care of that.

19 Q And any other times, may we assume, if they came across
20 an individual that would be beneficial to your investi-
21 gation, they would share that individual with you?

22 A In connection with this problem, yes.

23 Q Is it fair to say that prior to the 19th of June, 1975
24 you had pretty good information pertaining to the El
25 Marrocco?

A-17

1 A Not really, because we had just commenced the investiga-
2 tion.

3 Q Right. Well, you came on to the investigation, correct
4 me if I am wrong, as a result of speaking with Angelo
5 Monachino?

6 A That is correct.

7 Q Monachino, I will inform you, previously testified here.

8 A Yes, sir, I know this.

9 Q All right. Is this information kept at the Sheriff's
10 Office?

11 A What information?

12 Q The information that you gained as a result of the de-
13 briefing and the information you exchanged with the FBI?

14 A Well, it was reduced to interviews with suspects and --

15 Q Reduced to writings?

16 A Statements and writings.

17 Q I am merely asking you whether or not these statements
18 and information are kept at the Sheriff's Office?

19 A Yes, sir.

20 Q As are many other files, I don't mean to single this out,
21 that is where you keep all your investigation files?

22 A That is correct.

23 Q You are in charge of the Detective Bureau?

24 A That is correct.

25 Q That is the investigative arm of the Sheriff's Department?

A-18

1 A Exactly right, sir.

2 Q Now, you stated that on the 19th you had known Mr.
3 Moschiano for some period of time, going back about
4 twenty years?

5 A About twenty-two years. I hadn't seen him every week,
6 I had seen him every so often.

7 Q Were you aware that he was in your department on the
8 18th of June, 1975?

9 A I didn't see him, but I was made aware of it, yes, sir.

10 Q Do you know who he spoke with on the 18th?

11 A Investigator Kovack, and I think Agent Olson.

12 Q Do you know how long he was there at that time?

13 A No, I don't.

14 Q Do you know whether he was read his so-called rights that
15 you have stated here earlier on the 18th?

16 A I learned later he was, yes, sir.

17 Q Did Investigator Kovack make a report to you, as the
18 Chief, pertaining to the conversation that he had had
19 on the prior day?

20 A Yes, he made an oral report, as I recall.

21 Q It was not reduced to writing?

22 A No, sir.

23 Q And then the next day there was a telephone call made by
24 someone in your Bureau to have Mr. Moschiano come down
25 to the Detective Bureau?

A-19

- 1 A That is correct.
- 2 Q Do you know who made that call?
- 3 A To the best of my recollection, Investigator Kovack.
- 4 Q And did you know at that time whether or not Investigator
- 5 Kovack had a friendship or had known Mr. Moschiano?
- 6 A I didn't know that he knew him, no, sir.
- 7 Q On the 19th you stated that the first time you saw him
- 8 was sometime -- was it after noon, around one o'clock,
- 9 sometime in there?
- 10 A That I saw Mr. Moschiano?
- 11 Q Yes.
- 12 A A little after 11:00 A.M. in the morning.
- 13 Q Did you speak with him at that time?
- 14 A Yes, sir, I did.
- 15 Q Was this in your office?
- 16 A Yes.
- 17 Q And thereafter did you leave your office and turn him
- 18 over to Dennis Marinich?
- 19 A Around noon, yes, sir.
- 20 Q Did you speak to him for about an hour?
- 21 A I spoke to him, I would say, a little less than an hour.
- 22 Q At the time that you spoke with him did you reduce any
- 23 of the conversation to writing?
- 24 A No, sir, I did not.
- 25 Q Made no notes whatsoever?
- A No, sir.

A-20

1 Q Was there a stenographer there?

2 A No, sir.

3 Q And during the period of time that you spoke with the
4 defendant were there any other individuals in and out of
5 the room?

6 A Mr. Kovack was there in the beginning --

7 Q Was he --

8 A -- for a portion. He might have came back in for a min-
9 ute or two during my conversation.

10 Q How long was he in the room?

11 A Fifteen minutes maybe in the beginning, or less.

12 Q Was Special Agent Olson in there at that time?

13 A Not to my knowledge, no, sir. He wasn't called yet, I
14 don't believe.

15 Q Was he called after noontime?

16 A I believe in the area of one to one-thirty.

17 Q You were aware at that time of the numbers that you have
18 mentioned pertaining to the value of the property and
19 the payments, and so forth, the alleged payments?

20 A Not really, sir. I just commenced the investigation.
21 The first order was to talk to Mr. Moschiano, being one
22 of the owners of the property. I knew no dollar amounts,
23 I didn't have any insurance or arson reports.

24 Q You did have some idea as far as numbers were concerned?

25 A No, sir, I did not.

A-21

1 Q You did not?

2 A Not that I recall.

3 Q Did you talk to Mr. Moschiano about Vincent Rallo?

4 A Yes, I did.

5 Q Vincent Rallo was the insurance man?

6 A That is what he told me, yes, sir.

7 Q And you knew that from Mr. Moschiano's conversation about
8 the insurance, did you not?

9 A Yes, I did.

10 Q Yes. You stated that somewhere around noon to one o'clock
11 there was a polygraph test administered to Mr. Moschiano?

12 A Yes, sir, he agreed to take one.

13 Q Was that administered in your building?

14 A Yes, sir.

15 Q That is the department of Dennis Marinich?

16 A Yes.

17 Q Is that located on the same floor where your office is?

18 A Yes, sir.

19 Q Do you know how long this test took?

20 A Well, they returned in about an hour.

21 Q Would it have been more like two hours?

22 A No, sir.

23 Q Do you know how long the actual test itself took?

24 A Probably just a few minutes.

25 Q You are not certain?

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1 A I don't know in this particular case. I am going to pass
2 this.

3 Q You were not in and out of the room during the test?

4 A No.

5 Q You don't know anyone else that was in and out of the
6 room?

7 A I'm sure nobody else was.

8 Q You can't testify to that?

9 A I can't swear to my own knowledge, no, sir.

10 Q There did come a time subsequent to the test that Mr.
11 Moschiano was taken back to your office, is that correct?

12 A That is correct.

13 Q Were you there at the time?

14 A Yes, I was.

15 Q Had Mr. Olson been called at that time?

16 A No, sir.

17 Q Was anyone else in your office at that time when Mr.
18 Moschiano came back?

19 A Investigator Kovack. I told him to call Agent Olson.

20 Q Did you leave your office and turn Mr. Moschiano over
21 to Mr. Kovack?

22 A And Agent Olson.

23 Q And Agent Olson. How long did it take, if you know, for
24 Olson to get over to your office?

25 A I believe he got the message to him right away, he re-

1 sponded very promptly.

2 Q During that period of time, that interval awaiting for
3 Agent Olson, did you continue to talk to Mr. Moschiano
4 in the presence of Mr. Kovack?

5 A No. I believe we ordered coffee and sandwiches. I think
6 Mr. Moschiano had -- I know he had some coffee, I don't
7 know if he had a sandwich or not.

8 Q Your answer is that you don't know whether or not the
9 conversation continued while you were waiting for Mr.
10 Olson?

11 A There was no conversation, other than about the food and
12 the coffee.

13 Q So there was nothing about the subject matter?

14 A No, sir, not to my recollection.

15 Q You waited until Mr. Olson got there to continue?

16 A Yes, sir, as I said.

17 Q When Mr. Olson got there you left your office, you had
18 some other duties?

19 A Yes, sir.

20 Q And during the period of the afternoon did you then re-
21 turn to your office?

22 A Yes, sir.

23 Q And were you just in and out on an occasional basis?

24 A I would say so, yes, sir.

25 Q And while you were -- were there other detectives in and

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1 out of the office during the afternoon?

2 A Investigator Marks was in there.

3 Q Was he in and out?

4 A No, he came in, I wanted him to take the typewritten
5 statement.

6 Q Was there a Detective Malsegna that went in and out?

7 A Yes, sir.

8 Q And Mr. Marinich, was he in and out?

9 A No, he left after he returned, I believe.

10 Q Mr. Olson?

11 A Yes, he was around.

12 Q Did Kovack remain there all afternoon?

13 A I can't swear to that. I saw him on a couple of occasions.
14 I saw him in there at the end of the statement.

15 Q Was there any time Malsegna was in there and Kovack was
16 not?

17 A Could be, I don't know.

18 Q There has been testimony that during the afternoon you,
19 Malsegna, Marks, Kovack, Olson and Marinich were in and
20 out of the room.

21 MR. PARRY: I object, that is not the testimony. The testi-
22 mony of Detective Marks was that it is possible.

23 BY MR. HIRSCH:

24 Q I will withdraw the question and ask you whether or not
25 you were in and out, Malsegna, Marks, Kovack, Olson and

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1 Marinich during the course of the afternoon?

2 A Well, I would say I saw Marks in there. To the best of
3 my knowledge, he stayed there from two o'clock on.

4 Q Marks did?

5 A I believe he did. I know he was taking the statement at
6 three o'clock. To the best of my recollection, he fin-
7 ished the statement in the area of four o'clock.

8 Q He was in there a couple of hours?

9 A I think there was Kovack, Olson, Mr. Moschiano and Marks.

10 Q Marks was in a couple of hours?

11 A Primarily, I believe, Marks, whatever it took to question
12 him on the statement, I don't know, I wasn't there.

13 Q When you say he was in there for two hours --

14 A He was in there when I came back, I assumed he had been
15 in regular.

16 Q Don't assume. You don't know how long he was in there?

17 A I said it. I can only try to help you that way.

18 Q All right. Do you know a George Chase?

19 A Yes.

20 Q Was Mr. Chase in the room?

21 A He was in there when the statement was signed by Mr.
22 Moschiano.

23 Q Were you there at that time?

24 A I believe I was, yes.

25 Q Are you certain you were?

1 A I came in at the end. I remember Chase being there, and
2 I don't know if I stayed there or not. I knew what
3 Chase was there for.

4 Q Did you see Mr. Moschiano sign the statement, Government's
5 Exhibit 3?

6 A No, sir. I seem to remember it, yes. To the best of
7 my recollection I do, but, you know, I didn't actually
8 watch him.

9 Q You are not testifying under oath that you saw him sign
10 it?

11 A No, I said I could have been.

12 Q You could have been a lot of things on that day. Do you
13 have an independent recollection of seeing Mr. Moschiano
14 sign his name to the alleged statement, Government's
15 Exhibit 3?

16 A No, I can't say that.

17 MR. HIRSCH: That is all.

18

19 REDIRECT EXAMINATION BY MR. PARRY:

20 Q Mr. Mahoney, one further thing, when you were present
21 with Mr. Moschiano, did you or anyone in your presence
22 ever threaten him?

23 A No, sir.

24 Q Did you coerce him or intimidate him in any manner?

25 A No, sir, we did not.

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1 MR. PARRY: Thank you.
2 MR. HIRSCH: That is all.
3 THE COURT: Thank you, Mr. Mahoney.
4

5 (Witness excused.)
6

7 THE COURT: Ladies and gentlemen, we will take a noon
8 recess until one o'clock. Remember my ad-
9 monition. You have spent sometime listening
10 to the evidence, so keep your minds open as
11 far as forming any decisions on any of the
12 issues, and do not talk among yourselves
13 about it yet and, of course, most importantly,
14 do not talk with anybody else. We will see
15 you back here at one o'clock.
16

17 (Thereupon, the court was in recess at
18 12:00 noon.)
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

7 APPENDIX

I HEREBY CERTIFY that copies of the foregoing Brief/
for the United States have this day been mailed to counsel
for Appellant listed below:

Robert L. Hirsch, Esquire
777 Executive Office Building
Rochester, New York 14614

DATED: 9/7/77, 1977

Marye Wright
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Attorney,
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